

OFFICE OF THE GENERAL COUNSEL**MEMORANDUM GC 00-03**

May 3, 2000

TO: All Regional Directors, Officers-in-Charge, and Resident Officers**FROM:** Leonard R. Page, General Counsel**SUBJECT:** Realignment of Responsibilities

As a private practitioner, and now as the General Counsel I have always believed that the Agency's most important assets are the skills and abilities of Agency employees. Your talent has established the Agency's reputation for fairness and high quality work. With the advent of a more appropriate budget, we are embarking on an extensive hiring and training program. Our ability to hire high quality applicants to alleviate staffing shortages, as well as the development of excellent training programs for new as well as experienced employees, supervisors and managers, will greatly assist us in reducing backlogs and enhancing the high quality of our investigations and litigation. However, these initiatives have placed a substantial burden on the resources of Operations-Management, given the other important functions performed in that Division. Currently, a significant amount of casehandling management resides in the Division of Operations-Management. The Division of Advice has also shared an important role in this crucial responsibility. In light of the increasing demands on Operations, and in order to more fully utilize the resources available in Advice, I have decided to shift some casehandling responsibilities from Operations to Advice. In some areas the newly defined responsibilities are clearly separable. In others, the two Divisions will work closely together to develop casehandling strategies.

In addition, as a vital part of my general oversight of unfair labor practice casehandling matters, I wish to underscore that I am keenly interested in those cases that have the potential both for shaping Board law and for having a highly visible public impact. Thus, through the periodically updated list of mandatory Advice submissions, I have attempted to identify issues I want brought to my attention. Moreover, there will be a myriad of other legal issues, which will arise and which I can not fully anticipate at any point in time, in which I desire to be involved at a sufficiently early stage to allow me to help develop investigative and litigation strategy.

I recognize that the field offices may not always be familiar with those issues that may be of greatest interest to me. Thus, I am seeking to expand the dialogue between headquarters and the field in order to increase regional managers' awareness of those issues of immediate concern to me and to promote and encourage discussion of such issues through the Division of Advice at a sufficiently early stage to permit meaningful input. In this vein, I urge you to carefully review Significant Appeals Minutes and Advice Memoranda when determining whether a case should appropriately be brought to the attention of the Division of Advice. In addition, the Division of Advice will be issuing periodic reports to the field setting forth those issues that warrant special consideration, and thus should be brought to headquarters' attention.

Because Advice will have an expanded role in assisting Regions in their "C" case processing in a wider variety of cases, I am creating two new positions in the Division of Advice. One position will primarily involve responsibilities for litigation and investigative advice and guidance in 10(j) and C case matters. Through this position Advice will be able to provide discrete assistance where appropriate in handling complex litigation and novel 10(j) cases. For instance, Advice will develop legal arguments for inclusion in briefs on particular issues, which will be electronically available to the field. The other position will carry responsibility for developing training materials in both 10(j) and "C" case processing. In this regard, Advice will be developing materials to enhance the field's ability to carry out more effective and more regular office training programs as well as specific training programs to be conducted by Advice.

High Impact Case List

The High Impact Case List identifies cases raising both significant legal issues and those having a substantial impact on the public. Such a list can effectively assist me in identifying cases in which I have an interest only if the information is reported timely and at an early stage of case processing. In order to streamline the report so that the list is both more manageable and more instructive, the information which should be provided in the future will include (1) case name and number; (2) a brief

description of the issues; (3) the significance of the case, i.e., why the case has been placed on the High Impact Case List (review OM 98-37 regarding the types of cases that should be on the list); and (4) the status of the case. I have attached examples of reports that capture the type of information sought (See Attachment 1). In addition, there are currently a large number of cases that remain on the lists after briefs have been submitted to the ALJ. However, because of our desire for timely information, cases should be deleted at that stage, unless new or different issues arise later in the processing of the case. For instance, if the ALJD raises new significant legal or remedial issues that must be considered by the Board, Advice should be informed and the case should be re-entered on the list. Generally, there is no reason to carry a case on the list while it is pending before an ALJ. Similarly, once exceptions are filed, there is no need to carry a case on the list while it is pending before the Board.

Regions should continue to submit updated reports of the High Impact Case list every other month, but should now send such report electronically to their contacts in Operations and the Advice mailbox simultaneously. Regions should also inform both Operations and Advice of cases arising in the interim that would likely be included on the next High Impact Case List (see OM 98-37). Since prompt notification is essential to permit my timely consideration of important issues, I wish to reiterate this requirement, but note that with regard to representation cases only, the reporting requirement is limited to Operations.

Casehandling Submissions to Washington

As you know, historically the field offices have been required to submit to Operations-Management various casehandling matters for review, consultation and/or clearance. More recently, and particularly as a result of GC 94-10, certain issues that formerly required submission to headquarters remain within the discretion and judgment of the Regions. Upon careful review of how those matters are addressed in headquarters, and in consideration of the increasing demands on Operations, I have concluded that certain of the remaining mandatory submissions will be handled by Advice. This reassignment does not however alter the form or manner in which such submissions are to be made, except that Operations should receive copies of those submissions that will henceforth be directed to Advice. These submissions are in addition to the formal mandatory Advice submissions as most recently described in GC 99-10 (Revised).

Attachments 2 and 3 constitute the exclusive lists of casehandling submissions required in the C case area.¹ In essence, matters that relate primarily to substantive legal issues in unfair labor practices will now be directed to Advice. While these lists set forth all mandatory submissions, please keep in mind that it is my desire to encourage dialogue on a broad range of legal issues with Advice. Thus, Regional Directors are invited to contact Advice over any novel or complex legal issue that affects unfair labor practice casehandling. Thus, with experience, I anticipate that attachments 2 and 3 will be clarified and refined. Operations will continue to receive matters touching primarily upon resource and management issues, and representation case issues. Similarly, Regional Directors are encouraged to contact Operations when managerial or resource issues affect any aspect of unfair labor practice or representation case processing. Moreover, both divisions will continue to collaborate closely, as many cases will present overlapping issues.

Inquiries By Congress Or The Public To The General Counsel

Currently, inquiries directed to the General Counsel concerning regional office case processing are handled by Operations and the field jointly. Those functions will now be handled by the Division of Advice and the field jointly. Accordingly, upon receipt of such an inquiry, Advice will contact the field regarding preparation of an appropriate response. Copies of responses will go to Operations.

Multi-Regional Case Coordination

Cases that require national coordination will continue to require the involvement of both the Division of Operations-Management and the Division of Advice. When a region receives a charge that the Director has reason to believe will involve more than one region, the region needs to alert both Operations and Advice. Once the Divisions have been informed of the potential for multi-regional involvement, Operations will survey the field to determine the extent of potential multi-regional involvement and appoint an individual as the coordinator to work with the field and Advice in the management of the case. Thus, Operations will be responsible for resource and operational issues, whereas Advice will have responsibility for substantive casehandling matters. Of course, many issues will be closely related and will require close collaboration between

Advice and Operations.

Conclusion

I understand that these initiatives represent a change from certain of our historical methods of casehandling oversight and assistance. I am confident however, that with your support, these initiatives will permit me to utilize most effectively the resources in headquarters to maintain and enhance excellence in unfair labor practice casehandling.

/s/
L.R.P.

Attachment

ATTACHMENT #1

ABC Company, 38-CA-99988 - This Category III case was filed one week ago, alleging the illegal termination of 20 employees whom the Employer discharged for what it believed to be a violation of 8(g). This case presents a novel issue regarding the Union's deviation of 4 hours from the time given in its 8(g) notice. In addition to the 8(g) issue the Employer is arguing that certain employees engaged in misconduct warranting termination and/or a denial of reinstatement. Status: Early stage of investigation.

ATTACHMENT #2

Those matters, which should now be directed to Advice, (with copies to Operations) include:

- Novel or unusual situations involving the production of statements at a ULP hearing, such as referred to in Section 10394.12 of the ULP Casehandling Manual.
- If an ALJD embodies novel or complex policy questions, the Region should notify Advice of whether or not it intends to file exceptions. Further action should await direction from Advice.
- With respect to significant losses in an ALJD, an analysis of the decision, with emphasis on not only the result, but also the adequacy of the proposed remedy. See, GC 95-9 revising Casehandling Manual Section 10430.1
- In any case in which consideration is being given to requesting oral argument before the Board, clearance should be sought from Advice.
- In any case in which oral argument is ordered by the Board, Advice must be notified. Consultation between Advice and the Region will determine who will be responsible for the argument, the content thereof and related details.
- In any case in which the Region is considering filing a motion for reconsideration of a Board Order, the Region must seek clearance from Advice. The Region's recommendation should set forth both the legal and evidentiary reasons in support of its position and the substance of the proposed motion.
- In any case in which another party has filed a motion for reconsideration, and new or novel legal problems are involved, clearance from Advice should be sought.
- In any case where the Region is considering approval of a settlement agreement which is based on new or novel remedies, or where the notice posting is waived or is for less than 60 days, clearance should be sought from Advice.

- In cases where approval of a unilateral formal settlement is sought, the settlement should be submitted to Advice with a detailed transmittal memorandum giving all details of the settlement.
- In cases involving the issuance of an investigative, trial, or hearing subpoenas where a serious claim of privilege is likely to be raised or situation involving the issuance of investigative subpoenas post complaint but before hearing, clearance should be sought from Advice.
- In cases where, following issuance of any subpoena, intervening circumstances present enforcement problems, clearance should be obtained from Advice.
- In any case where the Region is considering denying the request of a private party for enforcement of a subpoena, clearance should be sought from Advice.
- With respect to Congressional inquiries addressed to regional offices which raise issues which are most properly addressed by headquarters such as cases of national importance (See Section 11886.2 of the ULP Casehandling Manual for a more inclusive listing) such matters should be referred to Advice for consideration and response. If the inquiry raises questions about boundary changes, the establishment of new office, or a change in the status of an existing office, those matters should be directed to Operations.

ATTACHMENT #3

The following list constitutes items which should continue to be sent to Operations. As mentioned above, such matters generally concern resource and management issues.

Those matters which should continue to be directed to Operations include:

- In cases where the Counsel for the General Counsel has provided Respondent a copy of a witness statement, and the Region becomes aware that the statement has been used for other than a legitimate trial purpose, such as distribution outside the hearing, the Region should advise Operations.
- In cases where responsibility for handling an unfair labor practice charge is being transferred to another Region, a request for an Order Transferring should be submitted to Operations.
- In cases where the Region is considering consolidating pending cases and the circumstances supporting consolidation do not fall within those set forth in Section 11720.2 of the ULP Casehandling Manual, clearance should be sought from Operations.
- In post hearing circumstances where the Region wishes to sever cases previously consolidated, clearance should be sought from Operations.
- In cases in which the alleged unfair labor practices also violate OSHA, the Region should refer to GC Memo 75-29 and 79-4 for instructions regarding submission to Operations.
- In cases in which the alleged unfair labor practices also violate the Federal Mine, Safety and Health Act, the Region should refer to GC Memo 80-10 for instructions regarding items to be submitted to Operations.
- In cases where the alleged discriminatee is being offered a cash settlement arguably in excess of the make whole amount in lieu of reinstatement, clearance should be sought from Operations.
- In cases where Respondent insists on cross-examining alleged discriminatees concerning their interim earnings and

search for work as a prerequisite for settlement, clearance should be sought from Operations.

- In cases involving possible criminal conduct related to Board proceedings, such as fraudulent authorization cards, perjury or obstruction of justice, clearance should be sought from Operations before referral to other Federal or State agencies.
- In cases where alleged unethical conduct of attorneys is involved, clearance should be sought from Operations before referral to an outside organization.
- In cases where the Region is considering payment of special fees for expert testimony, clearance should be sought from Operations.
- In any representation case where the issue involved concerns unusual or novel arrangements for an election, such as accepting parties' offer to share expenses, obtaining non-Board personnel to assist or notifying voters by public media, advice should be sought from Operations.²
- In circumstances where a Region wishes to request an Administrative Law Judge to conduct a complex post-election hearing, the Region should consult with Operations.
- In cases where a Board agent receives a subpoena, the Region should advise Operations of the facts so that a Section 102.118 request for permission to testify (if submitted) can be properly considered. Nothing herein is intended to alter the previous delegation of 102.118 decision making to the Regional Directors.
- In any case where the Region is considering introducing into the record matters of a confidential nature intended for intra-agency use, clearance should be sought from Operations.
- In cases where a Board agent is ordered to give information or produce records in violation of Section 102.118, the Region should notify Operations to permit consideration of an appropriate response.
- In cases where documents sought to be introduced in evidence contain confidential matters intended for intra-agency use, clearance from Operations must be obtained before their introduction.

¹ Submissions in the compliance and representation case areas will continue to be covered by the Compliance and Representation Case Manuals as well as superseding OMs

² To the extent there are submission requirements in the Representation Case Manual, those requirements remain in place.